

STEPHEN R. DECKER,

Plaintiff,

v.

UNITED STATES, *et al.*,

Defendants.

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CASE NO. C08-1339 RSM

ORDER GRANTING DEFENDANT’S

MOTION TO DISMISS

This matter comes before the Court on Defendant “United States’ Motion to Dismiss and Alternative Motion for Summary Judgment.” (Dkt. #13). Defendant argues that Plaintiff’s claims against the United States and the Internal Revenue Service for monetary damages and injunctive relief should be dismissed under either FRCP 12(b)(1), FRCP 12(b)(6), or FRCP 56(c).

II. DISCUSSION

Plaintiff Stephen R. Decker, proceeding *pro se*, initiated the instant lawsuit on September 8, 2008 against the United States and the Internal Revenue Service (“IRS”). Plaintiff demands nearly \$1.5 million in damages, apparently on the grounds that the IRS has

1 unlawfully levied taxes upon him. Plaintiff also seeks a declaration from the Court that his
2 tax liabilities are uncollectable. In support of this requested relief, Plaintiff brings nine
3 separate counts in his complaint, all of which allege that the IRS failed to comply with various
4 federal statutes. (Dkt. #11, Pl.'s Am. Compl., ¶¶ 19-69). Plaintiff also indicates in his
5 complaint that because he is "the sole owner of his physical and mental labor," the income he
6 earned during the years in which the IRS assessed a tax upon him does not constitute income,
7 gross income, or taxable income. (*Id.*, ¶¶ 2-6).

8 According to the IRS, Plaintiff has not filed a valid federal income tax return since
9 1996. The IRS additionally indicates that Plaintiff has failed to pay taxes from 1992 through
10 1996, and from 1999 through 2001. The IRS also contends that Plaintiff erroneously claimed
11 a false refund in 1993. As a result of this conduct, Plaintiff owes nearly \$2 million in taxes,
12 which includes civil penalties imposed by the IRS. The IRS has attempted to satisfy this
13 liability by filing tax liens and placing levies upon Plaintiff's property and wages to no avail.
14 Notably, it appears that Plaintiff has made several unsuccessful administrative attempts to
15 erase this substantial tax liability.

16 The United States (hereinafter "Defendant"), on behalf of the IRS, now brings the
17 instant motion to dismiss. Defendant notes at the outset that the IRS was improperly named
18 as they are a federal entity that is not subject to suit. Defendant subsequently argues that all
19 of Plaintiff's claims should be dismissed pursuant to FRCP 12(b)(1), FRCP 12(b)(6), or
20 FRCP 56(c).

21 **B. Plaintiff's Claims Against the IRS**

22 As a preliminary matter, the Court addresses Defendant's contention that the IRS was
23 improperly named. Agencies of the United States Government can generally be sued in their
24 own name only if Congress has explicitly waived sovereign immunity, or the agency is the
25 offspring of a suable entity. *See Blackmar v. Guerre*, 342 U.S. 512, 515 (1952). Congress
26 has not waived sovereign immunity for the IRS. *See White v. IRS*, 790 F.Supp. 1017, 1019
27 (D. Nev. 1990) ("[A]gencies such as the IRS are not suable entities."). Furthermore, "[w]here
28 relief, if granted, would result in a judgment that would expend itself on the public treasury or

1 restrain the Government from action or interfere with public administration, the suit
2 constitutes an action against the United States.” *Id.* (citing *Dugan v. Rank*, 372 U.S. 609, 620
3 (1962)). Based upon this well-established case law, it is clear that the IRS is not a properly
4 named defendant in this case. Accordingly, the IRS shall be dismissed from this lawsuit.

5 **C. Plaintiff’s Claims Against the United States**

6 Under FRCP 12(b)(1), courts can dismiss actions where a plaintiff fails to establish why
7 a federal court has subject matter jurisdiction over the claim. *See* FRCP 12(b)(1). Courts can
8 likewise dismiss actions under FRCP 12(b)(6) where a plaintiff fails to state a claim for which
9 relief can be granted. *See* FRCP 12(b)(6). Meanwhile, under FRCP 56(c), courts must
10 dismiss an action where there is no genuine issue of material fact. *See* FRCP 56(c).

11 Defendant argues that under these three standards, Plaintiff’s nine separate counts
12 implicating various federal statutes and challenging the validity of the tax liens imposed on
13 him should be dismissed. Notwithstanding the standards set forth in FRCP 12(b)(1) or FRCP
14 56(c), the Court agrees that all of Plaintiff’s claims shall be dismissed pursuant to FRCP
15 12(b)(6) for the reasons set forth below.

16 **1. U.S.C. § 2410**

17 Plaintiff’s first cause of action is a quiet title action pursuant to 28 U.S.C. § 2410.
18 Under this statute, the United States may be joined as a party to a quiet title action affecting
19 property upon which it claims a lien. 28 U.S.C. § 2410(a). Plaintiff claims that the tax liens
20 against his real and personal property should be removed because the IRS sent procedurally
21 invalid administrative notices to him.

22 However, the record clearly establishes that there were no procedural irregularities
23 when the IRS issued the liens Plaintiff complains about in this case. For example, for the
24 1993, 1994, 1996, 1999 and 2001 tax years, the IRS sent valid notices of deficiencies to
25 Plaintiff pursuant to 26 U.S.C. § 6212(a). (*See* Dkt. #14, Decl. of McCormally, ¶¶ 4-9, Exs.
26 A-14 – A-19). In addition, the record also shows for the years in which the IRS imposed civil
27 penalties on Plaintiff, the IRS sent Plaintiff multiple notices of assessments and demands of
28 payments pursuant to 26 U.S.C. § 6303. (*See* Dkt. #8, Decl. of Riehle, ¶ 6, Exs. A-1 – A-13).

1 When Plaintiff failed to satisfy his outstanding tax liabilities, the IRS ultimately sent valid
2 notices of intent to levy and collection due processes to Plaintiff on at least four different
3 occasions. (*Id.*, ¶ 8). Therefore Plaintiff cannot show that there was anything procedurally
4 improper about the notices sent by the IRS.

5 To the extent Plaintiff is challenging the merits of the assessment itself, it is well-settled
6 that a taxpayer cannot “use a section 2410 action to collaterally attack the merits of an
7 assessment.” *Elias v. Connett*, 908 F.2d 521, 527 (9th Cir. 1990) (citation omitted); *see also*
8 *Guthrie v. Sawyer*, 970 F.2d 733, 736-37 (10th Cir. 1992) (“As we have noted, the law is clear
9 that a challenge to the amount of the alleged deficiency cannot be raised in a quiet title
10 action.”). As a result, Plaintiff’s 28 U.S.C. § 2410 action shall be dismissed.

11 2. 26 U.S.C. §§ 6212(a) and 6213(a)

12 Plaintiff’s second claim alleges that the IRS failed to comply with 26 U.S.C. §§ 6212(a)
13 and 6213(a). The former lays out the proper procedure the IRS must follow when issuing a
14 Notice of Deficiency, while the latter sets forth the time in which a taxpayer may petition to
15 the Tax Court for a redetermination of a deficiency. These arguments are also without merit.

16 As established above, the IRS complied with the notification procedures of 26 U.S.C. §
17 6212(a) by issuing valid notices of deficiencies for the years in which the IRS assessed a tax
18 upon Plaintiff. Each notice was clearly sent to Plaintiff’s last known address, thereby
19 satisfying the requirement in 26 U.S.C. § 6303 which requires that “[s]uch notice shall be left
20 at the dwelling or usual place of business of such person, or shall be sent by mail to such
21 person’s last known address.” 26 U.S.C. § 6303; *see also King v. Comm’r*, 857 F.2d 676, 679
22 (9th Cir. 1988) (“A notice of deficiency is valid, even if it is not received by the taxpayer, if it
23 is mailed to the taxpayer’s last known address.”) (internal quotations and citations omitted).
24 The IRS recently sent several notices to Plaintiff at the same address he lists in the instant
25 lawsuit, significantly undermining Plaintiff’s argument that he did not have notice of his tax
26 deficiencies.

27 With respect to Plaintiff’s 26 U.S.C. § 6213(a) claim, Plaintiff fails to discuss in his
28 response why he has a cause of action under this statute. In any event, there exists no

1 evidence in the record that Plaintiff filed a petition to the Tax Court for a redetermination of
2 any tax deficiency. Plaintiff's claims under 26 U.S.C. §§ 6212(a) and 6213(a) shall be
3 dismissed.

4 3. 26 U.S.C. § 6203

5 Plaintiff's third claim alleges that the IRS failed to make a proper assessment in
6 violation of 26 U.S.C. § 6203. However, courts have consistently rejected the taxpayer
7 argument that § 6203 provides a cause of action when the IRS furnishes a Certificate of
8 Assessment, Payment, and Other Specified Matters ("Form 4340") to the taxpayer. *See Koff*
9 *v. United States*, 3 F.3d 1297, 1298 (9th Cir. 1993). It is well-settled that a Form 4340 is
10 "probative evidence in and of themselves and . . . [is] sufficient evidence to establish that . . .
11 assessments were properly made." *Hughes v. United States*, 953 F.2d 531, 540 (9th Cir.
12 1992). Here, the IRS clearly furnished Forms 4340 to Plaintiff for the years in question.
13 (Decl. of Riehle, Exs. A-1 – A-13). Therefore Plaintiff's 26 U.S.C. § 6203 claims shall be
14 dismissed.

15 4. 26 U.S.C. § 6303

16 Plaintiff next argues that the IRS failed to satisfy the notice requirements set forth in 26
17 U.S.C. § 6303. But as described above, the record clearly establishes that for the years in
18 which the IRS imposed civil penalties on Plaintiff, the IRS sent Plaintiff multiple notices of
19 assessments and demands of payments pursuant to 26 U.S.C. § 6303. (Decl. of Riehle, ¶ 6,
20 Exs. A-1 – A-13). In addition, forms 4340 are not only prima facie evidence that the
21 assessments were properly made, they also prove that notice and demand were properly sent.
22 *See Hansen v. United States*, 7 F.3d 137, 138 (9th Cir. 1993) (holding that "the IRS properly
23 submitted and relied on Form 4340 to show that notice and demand was sent to the
24 [taxpayers]"). As a result, Plaintiff's 26 U.S.C. § 6303 claims are meritless.

25 5. 26 U.S.C. § 6331(d)(2)(A)-(C)

26 Plaintiff additionally claims that the IRS failed to provide him with proper notices of
27 intent to levy in violation of 26 U.S.C. § 6331(d)(2)(A)-(C). This statute requires the IRS to
28 provide the taxpayer with such a notice within 30 days before the day of the levy. However,

1 Plaintiff clearly acknowledges in his amended complaint that he received multiple notices of
2 intent to levy. (*See* Pl.’s Am. Compl., Ex. A, pp. 25-26; Ex. B, pp. 45-46). Indeed, Plaintiff
3 fails to discuss in his opposition the IRS’s contention that it sent out valid Notices of Intent to
4 Levy in compliance with 26 U.S.C. § 6331. Consequently, Plaintiff’s claim under this statute
5 fails.

6 6. 26 U.S.C. § 6325(a)(1) and 26 U.S.C. § 7342

7 Plaintiff’s sixth count alleges that the United States should be liable under 26 U.S.C. §
8 7342 on the grounds that the IRS failed to release a lien upon his property under 26 U.S.C. §
9 6325. Before a lien will be released, the taxpayer must either satisfy the outstanding tax
10 liability, the lien must become legally unenforceable, or a bond must be accepted by the IRS
11 in lieu of payment. *See* 26 U.S.C. § 6325(a)(1)-(2). This requirement is based on the well-
12 established rule that a taxpayer must “pay first and litigate later.” *Flora v. United States*, 362
13 U.S. 145, 159-162 (1960).

14 Here, Plaintiff clearly cannot show that he has satisfied any of the conditions imposed
15 by 26 U.S.C. § 6325(a)(1)-(2). Instead, Plaintiff argues that he is somehow not subject to the
16 “tyrannical provisions” of the statutes he chooses to implicate in his own lawsuit. Plaintiff
17 further suggests that he is bringing a suit for damages rather than a tax refund, thereby
18 excusing him of the requirements in § 6325(a).

19 But as the Ninth Circuit has expressly found:

20 To allow the taxpayer to proceed with his damages claim would ignore the clear
21 language of § 7432(a), offend the “pay first” principle implicit in that statute, and
22 “invite taxpayers to circumvent the refund action process by litigating the merits of the
assessments against them in the collateral setting of a suit for damages allegedly caused
by the IRS’ refusal to release the liens on their property.”

23 *PCCE, Inc. v United States*, 159 F.3d 425, 428-29 (9th Cir. 1998) (quoting *McMillen v.*
24 *United States Dep’t of Treasury*, 960 F.2d 187, 190 (1st Cir. 1991)).

25 As a result, Plaintiff’s claims under these statutes fail.

26 7. 26 U.S.C. § 6751(b)

27 Plaintiff’s seventh count claims that the IRS failed to comply with the procedural
28 requirements of 26 U.S.C. § 6751(b) because no immediate supervisor approved Plaintiff’s

1 initial tax assessment. Notwithstanding the fact that Plaintiff offers no objective evidence in
2 support of his argument, this argument is in all respects identical to Plaintiff's third claim in
3 which he challenges the validity of the assessments imposed on him. As described above, a
4 Form 4340 is prima facie evidence that the assessments were made correctly. Accordingly,
5 Plaintiff's claim under 26 U.S.C. § 6751(b) shall be dismissed.

6 8. 26 U.S.C. § 6103(b)(6)

7 Plaintiff's eighth count alleges that the IRS violated the confidentiality provisions of 26
8 U.S.C. § 6103. Specifically, he claims that the IRS unnecessarily disclosed Plaintiff's social
9 security number a total of 24 times. However, the allegedly violative disclosures were made
10 within documents identifying Plaintiff as a taxpayer who had failed to pay his taxes.
11 Furthermore, 26 U.S.C. § 6103(k)(6) expressly holds that an IRS employee may, in
12 connection with any collection activity, "disclose return information to the extent that such
13 disclosure is necessary in obtaining information[.]" 26 U.S.C. 6103(k)(6). Case law
14 interpreting this statute and its corresponding regulations have found that the "disclosure of
15 return information necessary to accomplish collection activities, *including the service of*
16 *levies, issuance of summonses and the filing of notices of federal tax liens*, is exempt from the
17 general disclosure prohibition of Section 6103(a)." *Elias v. United States*, 1990 WL 264722,
18 at *5 (C.D. Cal. 1990) *aff'd* by 974 F.2d 1341 (9th Cir. 1992) (emphasis added). No
19 confidentiality provisions were violated in this case. Plaintiff's 26 U.S.C. § 6103(b)(6) claim
20 shall be dismissed.

21 9. 26 U.S.C. § 6331(a)

22 Lastly, Plaintiff argues that the IRS issued the levies upon him in violation of 26 U.S.C.
23 § 6331(a), a statute that gives the IRS authority to collect taxes. Plaintiff essentially questions
24 this authority of the IRS by invoking the Administrative Procedures Act ("APA"). Plaintiff
25 claims that he is entitled to judicial review of this claim because the APA allows him to assert
26 any legal wrong due to an agency action.

27 However, it is clear that "an action brought under the APA is barred if it concerns the
28 assessment or collection of federal taxes." *McGuirl v. United States*, 360 F.Supp.2d 129, 132

1 (D.D.C. 2004) (citation omitted). This principle rests upon the taxpayer's ability to challenge
2 a levy before the IRS Office of Appeals. *See* 26 U.S.C. § 6330. Therefore Plaintiff's 26
3 U.S.C. § 6331(a) claim also fails.

4 Overall, the Court rejects the anti-tax rhetoric contained in Plaintiff's briefings. The
5 Sixteenth Amendment to the United States Constitution clearly authorizes Congress to levy an
6 income tax, and the IRS's authority to collect this tax is found throughout Title 26 of the
7 United States Code. Plaintiff's belief that he should be immune from these laws is completely
8 without legal merit, and federal courts universally reject the types of arguments Plaintiff is
9 making here. *See In re Becraft*, 885 F.2d 547, 548 n.2 (9th Cir. 1989) ("We hardly need
10 comment on the patent absurdity and frivolity of such a proposition."); *Wilcox v. Comm'r*,
11 848 F.2d 1007, 1008 (9th Cir. 1988) ("[W]ages are income" and "paying taxes is not
12 voluntary."); (*Ryan v. Bilby*, 764 F.2d 1325, 1328 (9th Cir. 1985) ("Like it nor not, the
13 Internal Revenue Code is the law[.]"). Plaintiff's frivolous claims are hereby dismissed.

14 **III. CONCLUSION**

15 Having reviewed the relevant pleadings, and the remainder of the record, the Court
16 hereby finds and ORDERS:

17 (1) Defendant "United States' Motion to Dismiss and Alternative Motion for Summary
18 Judgment" (Dkt. #13) is GRANTED. Plaintiff's claims are dismissed with prejudice, and the
19 case is now CLOSED.

20 (2) The Clerk is directed to forward a copy of this Order to all counsel of record and
21 pro se Plaintiff.

22 DATED this 20th day of May, 2009.

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25 RICARDO S. MARTINEZ
26 UNITED STATES DISTRICT JUDGE
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